U.S. Department of Justice

Immigration and Naturalization Service

H4

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vienna Date: NOV 2 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the Officer in Charge, Vienna, Austria, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Macedonia who was present in the United States without a lawful admission or parole in September 1993. On January 28, 1997, the applicant was granted until July 28, 1997 to depart the United States voluntarily in lieu of removal. She failed to depart by that date. The applicant was removed from the United States on March 26, 1998, therefore, she is inadmissible under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii). The applicant married a native of Macedonia and naturalized U.S. citizen on March 27, 1997 while in removal proceedings. She is the beneficiary of an approved petition for alien relative. The applicant seeks permission to reapply for admission into the United States under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin her husband in the United States.

The applicant is also inadmissible under § 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year after March 31, 1997. Her date for voluntary departure expired on July 28, 1997 and she was removed on March 24, 1998.

The officer in charge determined that the unfavorable factors outweighed the favorable ones and denied the Form I-212 application accordingly. The officer in charge rejected the Form I-601 application as the applicant is not otherwise admissible.

The officer in charge requested a Form G-28 be filed with the applicant's letter of June 14, 2000. A Form G-28 has not been included in the record; therefore, the applicant will be considered as self-represented.

The Associate Commissioner noted that the applicant's unlawful entry, her being found removable, her failure to depart voluntarily, her marriage while in removal proceedings and her lengthy unauthorized stay in the United States were unfavorable factors which outweighed the favorable ones and dismissed the applicant's appeal.

On motion, the applicant's spouse discusses the immigration consultant who assisted them previously, his life-long friendship with the applicant, the fact that their marriage is the first for both parties and how he misses her.

8 C.F.R. 103.5(a)(2) provides that a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. 103.5(a)(3) provides that a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

[redacted]

8 C.F.R. 103.5(a)(4) provides that a motion which does not meet applicable requirements shall be dismissed.

The issues mentioned on motion have already been addressed with the initial application or on appeal. No new facts to be proved have been introduced in the present matter. Therefore, the motion will be dismissed.

ORDER: The motion is dismissed. The order of December 22, 1999 dismissing the appeal is affirmed.